

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Requests for Review of)	
Decisions of the)	
Universal Service Administrator by)	
)	
Approach Learning and Assessment Centers)	File Nos. SLD-506121, <i>et al.</i>
Santa Ana, CA, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: October 30, 2008

Released: October 30, 2008

By the Acting Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we address 12 appeals of decisions by the Universal Service Administrative Company (USAC) concerning applications for discounts under the schools and libraries universal service support mechanism (also known as the E-rate program).¹ All of the decisions at issue involve the denial of funding by USAC on the ground that the underlying applications violated the Commission’s competitive bidding rules.² As discussed below, we find that the petitioners did not violate the Commission’s competitive bidding requirements with respect to the application numbers listed in the appendix. We therefore grant the appeals related to the identified application numbers and remand these applications to USAC for further action consistent with this order.³ To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of the applications and issue a decision based on a complete review and analysis no later than 90 calendar days from release of this order.⁴

¹ See Appendix for a list of appeals and associated application numbers addressed in this order. In this order, we use the term “appeals” to generally refer to requests for waiver and requests for review of decisions issued by USAC. Section 54.719(c) of the Commission’s rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

² See 47 C.F.R. §§ 54.504 (a)-(c).

³ Although we grant the appeals with respect to the application numbers listed in the appendix, we make no finding as to the ultimate eligibility of the requested services for E-rate funding.

⁴ In performing a complete review and analysis of each underlying application, USAC shall either grant the underlying application before it, or, if denying the application, provide the applicant with any and all grounds for denial.

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.⁵ The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library, or consortium that includes eligible schools and libraries must seek competitive bids for all services eligible for support.⁶

3. In accordance with the Commission's rules, an applicant must submit for posting on USAC's website an FCC Form 470 requesting discounts for E-rate eligible services for which the applicant is seeking a new contract.⁷ The applicant must describe the desired services with sufficient specificity to enable potential service providers to submit bids.⁸ The applicant must provide this description on its FCC Form 470 or indicate on the form that it has a Request for Proposal (RFP) available providing detail about the requested services.⁹ The RFP must be available to all potential bidders for the duration of the bidding process.¹⁰

4. After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.¹¹ The applicant must then submit a completed FCC Form 471 to notify USAC of the services that have been ordered, the service providers with which the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.¹²

5. *Requests for Review.* The petitioners submitted their FCC Forms 470 to USAC to initiate the competitive bidding process for E-rate eligible services.¹³ Subsequently, the petitioners entered into service contracts and filed their FCC Form 471 applications with USAC for Funding Years 2005, 2006,

⁵ 47 C.F.R. §§ 54.501-54.503.

⁶ 47 C.F.R. §§ 54.504, 54.511(c).

⁷ 47 C.F.R. § 54.504(b).

⁸ *Id.*; see also *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776, at 9077-80, paras. 572-579 (1997) (subsequent history omitted) (describing sequence of designing a detailed technology plan and subsequently submitting a detailed description of services sought.)

⁹ See, e.g., *Schools and Libraries Universal Service, Description of Services Requested and Certification Form*, OMB 3060-0806 (October 2004) (FCC Form 470).

¹⁰ *Id.*

¹¹ 47 C.F.R. § 54.504(b)(4).

¹² 47 C.F.R. § 54.504(c).

¹³ See FCC Form 470, Approach Learning and Assessment Centers (posted Dec. 22, 2005); FCC Form 470, Brevard County School District (posted Nov. 18, 2005); FCC Form 470, Charleston County School District (posted Jan. 12, 2006); FCC Form 470, Hoboken School District (posted Dec. 22, 2005); FCC Form 470, Division of Juvenile Justice California Education Authority (posted Dec. 1, 2004); FCC Form 470, Leeds City School District (posted Jan. 14, 2005) (Leeds FCC Form 470); FCC Form 470, Los Fresnos Consolidated Independent School District (posted Jan. 5, 2005); FCC Form 470, New Orleans Public Schools (posted Jan. 8, 2006) (New Orleans FCC Form 470); FCC Form 470, Northeast Arizona Technological Institute of Vocational Education (posted Dec. 23, 2005); FCC Form 470, Portland Public Schools (posted Jan. 13, 2005, and Jan. 14, 2005); FCC Form 470, Rio Grande City Consolidated School District (posted Dec. 20, 2005); FCC Form 470, Strathmore Union Elementary School District (posted Dec. 29, 2004).

or 2007.¹⁴ USAC denied the petitioners' applications on the ground that the petitioners violated the Commission's competitive bidding rules because they had issued RFPs, despite having indicated on their FCC Forms 470 that no RFP existed.¹⁵ USAC later affirmed these decisions on appeal.¹⁶ The petitioners then filed the instant Requests for Review with the Commission.¹⁷

III. DISCUSSION

6. For the reasons explained below, we grant the petitioners' appeals related to the application numbers listed in the appendix and remand these applications to USAC for further action consistent with this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.¹⁸ We remind USAC of its obligation to independently

¹⁴ See FCC Form 471, Approach Learning and Assessment Centers (filed Feb. 15, 2006); FCC Form 471, Brevard County School District (filed Feb. 8, 2006); FCC Form 471, Charleston County School District (filed Feb. 14, 2006); FCC Form 471, Hoboken School District (filed Feb. 18, 2005); FCC Form 471, Division of Juvenile Justice California Education Authority (filed Feb. 18, 2005); FCC Form 471, Leeds City School District (filed Feb. 8, 2006); FCC Form 471, Los Fresnos Consolidated Independent School District (filed Feb. 18, 2005); FCC Form 471, New Orleans Public Schools (filed Feb. 16, 2006 and Feb. 8, 2007); FCC Form 471, Northeast Arizona Technological Institute of Vocational Education (filed Feb. 16, 2006); FCC Form 471, Portland Public Schools (filed Feb. 18, 2005); FCC Form 471, Rio Grande City Consolidated School District (filed Feb. 15, 2006 and Feb. 16, 2006); FCC Form 471, Strathmore Union Elementary School District (filed Feb. 14, 2005).

¹⁵ Letter from USAC, Schools and Libraries Division, to Kathy Jones, Approach Learning and Assessment Centers (dated Jan. 30, 2007); Letter from USAC, Schools and Libraries Division, to Richard Larson, eRate Consulting Services, LLC, on behalf of Brevard County School District (dated Aug. 15, 2006); Letter from USAC, Schools and Libraries Division, to Julie Wheat, Charleston County School District (dated May 8, 2007); Letter from USAC, Schools and Libraries Division, to Dan Riorden, Hoboken School District (dated Aug. 15, 2006); Letter from USAC, Schools and Libraries Division, to David Marson, Division of Juvenile Justice California Education Authority (dated Dec. 27, 2005); Letter from USAC, Schools and Libraries Division, to Mark E. Pierce, Leeds City School District (dated Dec. 27, 2006); Letter from USAC, Schools and Libraries Division, to Brad Rohrbach, Strathmore Union Elementary School District (dated May 8, 2006); Letter from USAC, Schools and Libraries Division, to David Young, Los Fresnos Consolidated Independent School District (dated Dec. 14, 2005); Letter from USAC, Schools and Libraries Division, to Peggie Abadie, New Orleans Public Schools (dated Dec. 12, 2006); Letter from USAC, Schools and Libraries Division, to Karen Leshner, Northeast Arizona Technological Institute of Vocational Education (dated Aug. 15, 2006); Letter from USAC, Schools and Libraries Division, to Ian Poellet, Portland Public Schools (dated Sept. 20, 2006); Letter from USAC, Schools and Libraries Division, to Vilma Garza, Rio Grande City Consolidated School District (dated Apr. 24, 2007).

¹⁶ Letter from USAC, Schools and Libraries Division, to Kathy Jones, Approach Learning and Assessment Centers (dated Mar. 26, 2007); Letter from USAC, Schools and Libraries Division, to Richard Larson, eRate Consulting Services, LLC, on behalf of Brevard County School District (dated Dec. 19, 2006) (Brevard Administrator's Decision Letter); Letter from USAC, Schools and Libraries Division, to F. Russell Douppnik, Charleston County School District (dated Aug. 30, 2007); Letter from USAC, Schools and Libraries Division, to Dan Riorden, Hoboken School District (dated Aug. 29, 2006); Letter from USAC, Schools and Libraries Division, to David Marson, Division of Juvenile Justice California Education Authority (dated Aug. 15, 2006); Letter from USAC, Schools and Libraries Division, to Mark E. Pierce, Leeds City School District (dated Feb. 2, 2007); Letter from USAC, Schools and Libraries Division, to David Young, Los Fresnos Consolidated Independent School District (dated Aug. 15, 2006); Letter from USAC, Schools and Libraries Division, to Karen Leshner, Northeast Arizona Technological Institute of Vocational Education (dated Dec. 5, 2006); Letter from USAC, Schools and Libraries Division, to Ian Poellet, Portland Public Schools (dated Feb. 5, 2007); Letter from USAC, Schools and Libraries Division, to Brad Rohrbach, Strathmore Union Elementary School District (dated Aug. 15, 2006).

¹⁷ See Appendix.

¹⁸ Additionally, nothing in this order is intended: (1) to authorize or require payment of any claim that previously may have been released by a service provider or applicant, including in a civil settlement or plea agreement with the

determine whether the disbursement of universal service funds would be consistent with program requirements, Commission rules and orders, or applicable statutes and to decline to disburse funds where this standard is not met. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of the applications and issue a decision based on a complete review and analysis no later than 90 calendar days from release of this order.¹⁹ We emphasize that the actions taken in this order should have minimal effect on the overall federal Universal Service Fund because the monies needed to fund these appeals have already been collected and held in reserve.²⁰

7. Nine of the petitioners—Approach Learning and Assessment Centers (Approach Learning), Charleston County School District (Charleston), Hoboken School District (Hoboken), Division of Juvenile Justice California Education Authority (Juvenile Justice), Los Fresnos Consolidated Independent School District (Los Fresnos), Northeast Arizona Technological Institute of Vocational Education (NATIVE), Portland Public Schools (Portland), Rio Grande City Consolidated School District (Rio Grande), and Strathmore Union Elementary School District (Strathmore)—contend that the documents issued to service providers were not RFPs or did not meet state RFP requirements.²¹ Some of these petitioners argue that the documents provided to prospective service providers, entitled, for example, “Request for Quotes,” “Scope of Work and Guidelines,” and “Description of Services,” were merely a restatement of information on their FCC Forms 470 with some additional information about the desired services.²² Other petitioners argue that prospective service providers did not need to read any documents other than the applicant’s FCC Form 470 in order to prepare bids.²³ The petitioners explain that each service provider expressing an interest in bidding received additional information regarding the desired services.²⁴

8. After reviewing the record, we find that these nine petitioners complied with the Commission’s competitive bidding requirements for the application numbers listed in the appendix, and under the circumstances of these cases, it would be inequitable not to provide the requested relief. Despite petitioners’ failure to correctly indicate on the Forms 470 whether they had issued an RFP, we

United States; or (2) to authorize or require payment to any person or entity that has been debarred from participation in the E-rate program.

¹⁹ In performing a complete review and analysis of each underlying application, USAC shall either grant the underlying application before it, or, if denying the application, provide the applicant with any and all grounds for denial.

²⁰ We estimate that granting the appeals with respect to the application numbers listed in the appendix involves approximately \$10.2 million in funding for Funding Years 2005-2007. We note that USAC has already reserved sufficient funds to address outstanding appeals. *See, e.g.*, Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2008 (Aug. 1, 2008). Thus, we determine that the action we take today should have minimal impact on the Universal Service Fund as a whole.

²¹ *See* Approach Learning Request for Review at 1; Charleston Request for Review at 3-5; Hoboken Request for Review at 2; Juvenile Justice Request for Review at 2-3; Los Fresnos Request for Review at 2; NATIVE Request for Review at 5; Portland Request for Review at 3; Rio Grande Request for Review at 5; Strathmore Request for Review at 2.

²² *See* Charleston Request for Review at 3-4; Hoboken Request for Review at 2; Los Fresnos Request for Review at 1; NATIVE Request for Review at 4; Portland Request for Review at 2-3; Strathmore Request for Review at 2.

²³ *See* Hoboken Request for Review at 2; NATIVE Request for Review at 4; Rio Grande Request for Review at 4; Strathmore Request for Review at 2.

²⁴ *See* Approach Learning Request for Review at 1; Charleston Request for Review at 3-5; Hoboken Request for Review at 2; Juvenile Justice Request for Review at 2; Los Fresnos Request for Review at 2; NATIVE Request for Review at 4; Portland Request for Review at 3; Rio Grande Request for Review at 4.

find that all bidders were on a level playing field. The petitioners' FCC Forms 470 contained enough detail for service providers to identify the desired services and to formulate bids, and it appears that all interested bidders also had access to whatever additional information petitioners provided in the auxiliary documents. Thus, we conclude that rejecting the identified applications on the ground that the petitioners failed to advise bidders that an RFP existed is not warranted in these instances. In addition, we find that there was no actual harm to the competitive bidding process. We thus grant the petitioners' appeals and remand the applications listed in the appendix to USAC for further processing.²⁵

9. In the case of Brevard County School District (Brevard), USAC determined that a document entitled "Student E-mail RFP" provided by a Brevard employee during the selective review process should have been identified on Brevard's FCC Form 470.²⁶ USAC concluded that by failing to advise bidders that the RFP was issued, Brevard undermined the framework of the competitive bidding process.²⁷ In its appeal, Brevard states that the submission of the "Student E-mail RFP" was in error because the document was only a draft proposal and was never made public.²⁸ As proof of this assertion, Brevard provides written statements by Brevard's Manager of Educational Training and Customer Support and by Brevard's Director of Purchasing and Warehouse Services attesting that the document was a draft proposal that was never released to the public and that no other RFP or similar document was prepared or issued to the public concerning the services at issue.²⁹ After reviewing the record, we find that Brevard complied with the Commission's competitive bidding requirements because it did not have an RFP available for public inspection and therefore it did not need to indicate on its FCC Form 470 that there was an RFP available. We therefore grant Brevard's appeal and remand its application to USAC for further processing.

10. USAC also denied Leeds's request for funding because Leeds failed to provide USAC with a valid RFP during the selective review process.³⁰ Leeds states that it failed to provide a copy of the RFP because it misunderstood USAC's request for information and, as a result, provided copies of responses to the RFP rather than the RFP itself.³¹ The record shows that an RFP was available for service providers to review when Leeds posted its FCC Form 470 requesting bids for the services at issue.³² Specifically, we find that Leeds prepared its RFP in December 2004, one month before it posted its FCC Form 470.³³ In addition, the record shows that Leeds received four proposals in response to the RFP.³⁴ Because it appears that Leeds otherwise conducted a fair competitive bidding process, we grant its appeal and remand the underlying application to USAC for further processing.

²⁵ See Appendix.

²⁶ See Brevard Administrator's Decision Letter.

²⁷ *Id.*

²⁸ Brevard Request for Review at 1.

²⁹ *Id.* at Attachments 7 and 8.

³⁰ See Letter from USAC, Schools and Libraries Division, to Mark E. Pierce, Leeds City School District (dated Feb. 2, 2007).

³¹ See Leeds Request for Review at 2-3.

³² *Id.* at Exhibit D.

³³ *Id.*; see also Leeds FCC Form 470.

³⁴ See Leeds Request for Review at Exhibit D.

11. Lastly, with regard to New Orleans, the record shows that the FCC Form 470 at issue sought vendor proposals for local and long distance telecommunications service.³⁵ New Orleans states that although it indicated on its FCC Form 470 that there was no RFP, there actually was an RFP that covered the provision of the requested telecommunications services.³⁶ That RFP, entitled “Specifications for Infrastructure Technology Integration Provider,” was identified on another FCC Form 470 that requested bids for Internet access and internal connections.³⁷ New Orleans states that the latter FCC Form 470 should have included a request for telecommunications and should have been cited on the funding request numbers (FRNs) at issue.³⁸ New Orleans explains that this omission was an honest mistake by a New Orleans employee under considerable stress due to Hurricane Katrina.³⁹ Cox Communications and BellSouth submitted bids in response to the RFP, and ultimately, New Orleans selected Cox Communications to continue to provide the requested services.⁴⁰

12. Based on the facts and extenuating circumstances of this specific case, including an employee who made an honest mistake under the stress of a natural disaster of historic proportions, and the absence at this time of any evidence of waste, fraud or abuse, we grant New Orleans’s appeal. Although New Orleans should have indicated on its FCC Form 470 that there was an RFP available for the desired telecommunications services, we find that there was no harm to the competitive bidding process because the two companies that submitted bids received New Orleans’s RFP.⁴¹ We therefore grant New Orleans’s appeal and remand the underlying applications to USAC for further processing.

13. We emphasize the limited nature of these decisions. The Commission’s competitive bidding rules serve as a central tenet of the E-rate program. They ensure more efficient pricing for telecommunications and information services purchased by schools and libraries and help deter waste, fraud and abuse.⁴² Although we grant the subject appeals before us, our action here does not eliminate or mitigate any of our competitive bidding requirements or the obligations of participants in the E-rate program to comply with the Commission’s rules.

14. Finally, we emphasize that the Commission is committed to guarding against waste, fraud, and abuse, and ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant the appeals related to the application numbers listed in the appendix, this action does not affect the authority of the Commission or USAC to conduct audits or investigations to determine compliance with the E-rate program rules and requirements. Because audits or investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or the Commission’s rules, such proceedings can reveal instances in which universal service funds were disbursed improperly or in a manner inconsistent with the statute or the Commission’s rules. To the extent the Commission finds that funds were not used properly, the Commission will require USAC to recover such funds through its normal processes. We emphasize that the Commission retains the

³⁵ New Orleans FCC Form 470.

³⁶ New Orleans Request for Waiver at 1-2.

³⁷ *Id.* at 2.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 3.

⁴¹ We note that New Orleans referenced the same FCC Form 470 at issue for its Funding Year 2007 FCC Form 471 application. *See* FCC Form 471, New Orleans Public Schools (filed Feb. 8, 2007) (FCC Form 471 Application Number 550299, FRN 1572339).

⁴² *See Adams County Order*, 22 FCC Rcd at 6022, para. 8.

discretion to evaluate the uses of monies disbursed through the E-rate program and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred and that recovery is warranted. We remain committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission's procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

15. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to the authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Requests for Review filed by Approach Learning and Assessment Centers on August 13, 2007, Brevard County School District on February 15, 2007, Charleston County School District on October 29, 2007, Hoboken School District on September 25, 2006, Division of Juvenile Justice California Education Authority on October 12, 2006, Leeds City School District on March 12, 2007, Los Fresnos Consolidated Independent School District on October 16, 2006, New Orleans Public Schools on February 9, 2007, Northeast Arizona Technological Institute of Vocational Education on January 24, 2007, Portland Public Schools on April 9, 2007, Rio Grande City Consolidated School District on May 30, 2007, and Strathmore Union Elementary School District on August 29, 2006, ARE GRANTED with respect to the application numbers listed in the appendix and REMANDED to USAC for further consideration in accordance with the terms of this order.

16. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to the authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Universal Service Administrative Company SHALL COMPLETE its review of the remanded applications and ISSUE an award or a denial based on a complete review and analysis no later than 90 calendar days from the release of this order.

17. IT IS FURTHER ORDERED that, pursuant to the authority delegated under sections 0.91, 0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jennifer K. McKee
Acting Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX

Applicant	Application Number	Funding Request Number(s)	Funding Year
Approach Learning and Assessment Centers Santa Ana, CA	506121	1391000 1391002 1466639	2006
Brevard County School District Viera, FL	494220	1382385	2006
Charleston County School District Charleston, SC	494054	1429328 1429353 1429359	2006
Hoboken School District Hoboken, NJ	472160	1300717 1300788 1300807 1302637 1344875	2005
Division of Juvenile Justice California Education Authority Sacramento, CA	461261	All FRNs	2005
Leeds City School District Leeds, AL	515349	1417968	2006
Los Fresnos Consolidated Independent School District Los Fresnos, TX	482490 460009	1336058 1327365 1327694 1328210	2005
New Orleans Public Schools New Orleans, LA	517092 550299	1443616 1572339	2006 2007
Northeast Arizona Technological Institute of Vocational Education Kayenta, AZ	507313	All FRNs	2006
Portland Public Schools Portland, OR	449002 478450	All FRNs	2005
Rio Grande City Consolidated School District Rio Grande City, TX	523659 524550 526314 526456	All FRNs	2006
Strathmore Union Elementary School District Strathmore, CA	460299	1285820 1285827 1285833	2005